80-1080

Supreme Court, U. S.
FILED
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NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

1980 TERM

VERNA BIBLE, ROBERT STEVEN MEZIERE AND BILLY W. MOORE,

Petitioners,

Versus

STATE OF LOUISIANA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI

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Verna Bible, Robert Steven Meziere, and Billy W. Moore, Citizens of the State of Louisiana and of the United States, pray that a Writ of Certiorari issue to review the Judgment of the Supreme Court of the State of Louisiana on September 3, 1980, affirming the conviction and sentence of your petitioners in a criminal case.

Questions Presented for Review

(1) Does a tip received by peace officers prior to the arrival of a car suspected of transporting marijuana, even though followed by probable cause, authorize the removal and opening of a closed suitcase from the trunk of said vehicle without obtaining a search warrant therefor?

(2) Do the facts of this case (as set out hereinafter) coincide with those facts in Chadwick vs. United States, 433 U.S. 1, 97 S. Ct. 2476

(1977) sufficiently to require a reversal of conviction because of warrantless search?

(3) Did the Louisiana Supreme Court err in failing to apply the exclusionary rule pronounced by this Honorable Court in the Chadwick case (supra) to the instant case which occurred subsequent to the date of the Chadwick case?

List of Parties to Proceeding

Verna Bible, Robert Steven Meziere, and Billy W. Moore - Petitioners.

State of Louisiana - Prosecuting authority and Respondent

Honorable Lowen B. Loftin, District Attorney in and for the Fifth District Court, State of Louisiana, Parish of Richland.

Honorable William R. Coenen, Jr. Assistant District Attorney in the above district.

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Official Report of Case

The Opinion of the Louisiana Supreme Court sought to be reviewed herein is reported at Vol. 389, Southern Reporter (2nd series) Page 42, the decision on rehearing having been entered on October 31, 1980.

Grounds on which Jurisdiction of United States Supreme Court Invoked

The Louisiana Supreme Court affirmed the conviction of the three defendants of the offense of Possession of Marijuana with Intent to Distribute on original opinion and judgment entered September 3, 1980. An Application for Rehearing was timely filed and was denied on October 31, 1980, followed by a 60 day Stay Order of Execution rendered November 6, 1980. The jurisdiction of this Honorable Court is invoked under 28 U.S.C. Sec. 1257 (3) and 28 U.S.C. Sec. 2101.

Constitutional Provisions Involved

The principal consitutional provision involved in this case is the Fourth Amendment to the United States Constitution requiring a warrant based on probable cause for the search and seizure of a person's belongings.

Statement of the Case

This case involves a warrantless arrest of defendants and a warrantless seizure and search of a suitcase locked in the trunk of their car, after the car had been stopped and detained by peace officers. The officers had stopped and detained defendants car on a public highway on the basis of a tip received six (6) hours before from a confidential informant to the effect that the car described would arrive at a certain trailer park in Rayville, Louisiana at a certain time with a quantity of marijuana. Not finding anything on the person of any of the

defendants or inside the car proper, the officers then proceeded to unlock the trunk of the car, remove a closed suitcase therefrom, open the same and find a quantity of marijuana inside. A local district judge was just a phone call away, yet no effort was made to obtain a search warrant to enter the trunk of defendants car and to open the suitcase.

On the basis of the above facts, counsel for defendants filed in limine a Motion to Suppress all evidence in the hands of the State by virtue of the above related warrantless search and seizure based upon the ground that the same violated defendants constitutional rights vouchsafed to them by the Fourth Amendment to the United States Constitution. This Motion was tried prior to trial on the merits, and was overruled by the district judge, to which ruling counsel for defendants objected and reserved the right

to file an Assignment of Error in the event of conviction.

After a jury trial held subsequent to the Motion to Suppress Hearing, the defendants were convicted and sentenced. An Appeal to the Louisiana Supreme Court was taken by defendants and timely filed therein. Included in the record of that appeal was an Assignment of Error filed by counsel for defendants based upon the trial judge's overruling of defendants Motion to Suppress prior to trial.

ARGUMENT

May It Please the Court:

As set out in the facts of the case hereinabove, this case presents the question of the validity of a warrantless search of a person's luggage retrieved from an automobile at a time when the occupants of the car (and the owner of the suitcase) were outside the vehicle under detention after the stopping of the

car, and the police were in complete control. Your Honors have held in at least two cases that the search of unopened luggage under such circumstances violates the Warrant Clause of our Constitution. United States vs. Chadwick, 433 U.S. 1, 97 S. Ct. 2476 (1977) and Arkansas vs. Sanders, 99 S. Ct. 2586 (1979). This case, in all salient respects, presents practically the same facts and circumstances of the Chadwick and Sanders cases, including:

(1) Tip from a confidential informant advising the anticipated transport of contraband to a particular destination and the means of transportation;

(2) Surveillance by police at the site of the predicted arrival of the offender(s);

(3) The unfolding of events completely corroborating the information given by the confidential informant;

(4) The stopping of vehicle and detention of the parties involved;

(5) The removal of luggage from the vehicle involved and seizure thereof by the police;

(6) The opening and searching of said luggage without a warrant and discovery of contraband therein.

As a matter of fact, in his concurring opinion to the original opinion of the Louisiana Supreme Court on September 3, 1980, Justice Calogero (under the erroneous impression that the date of the offense in this case occurred prior to the Chadwick and Sanders cases) commented on the identity of the factual features of this case to the above mentioned cases in the following manner:

> "I concur because I agree that Sanders and Chadwick, supra, are not to be given retroactive application. I do, however, find them indistinguishable from the instant case." (see Appendix, pp. xxi; emphasis supplied).

Somehow, the author of the original opinion (Justice Lemmon) in setting out the facts of the case stated that this offense occurred on March 2, 1977 whereas the correct date was March 2, 1979. (It is this writer's understanding that at our Supreme Court's conferences after the writing of opinions, the members of the Court assume that the facts are correctly set out in the respective opinions presented by Justices assigned to each case and that the conferences therefore deal only with the legal issues involved in each case). The original opinion therefore concluded that the date of the alleged offense in this case ante-dated both the Chadwick case (June 21, 1977) as well as the Sanders case (June 20, 1979). The original opinion therefore held that neither the Chadwick nor the Sanders case could be given retroactive effect by virtue of Your Honors' holding

in United States vs. Peltier, 422 U.S. 531, 95 S. Ct. 2313 (1975) to the effect that cases extending the exclusionary rule should not be given retroactive effect. (See Appendix pp. xix-xx)

An Application for Rehearing was timely filed pointing out the Court's error in this very important factual aspect of the case. The Application for Rehearing was denied on October 31, 1980 by way of a PER CURIAM wherein the Court attempted to rationalize the result of its previous decision, notwithstanding that it now realized the Chadwick case was handed down some two years prior to the date of the offense in this case. (see Appendix pp. xxiii-xxiv) To this PER CURIAM, Justice Calogero then filed a vigorous dissent, partially quoted from as follows:

> ". . . . . In light of the correction in the date of the search and the effect of the Chadwick case,

> this case being indistinguishable from Chadwick, I am of the opinion that defendants' convictions should be reversed. In Chadwick, the United States Supreme Court stressed that luggage is intended as a repository of personal effects and that the contents are not open to public view. Consequently a person's expectation of privacy regarding personal luggage is substantially greater than in an automobile. When no exigency is shown to exist, supporting the need for an immediate search, a warrant is required to validate the search of luggage. 433 U.S. at 13-15.
> "For this reason I would grant a rehearing" (See Appendix pp. xxv-xxvi).

Justice Dennis, who had dissented from the majority original opinion of September 3, 1980, also indicated that he would grant a rehearing, thus in effect joining the dissent of Justice Calogero.

In Chadwick, the container of the contraband was a 200 pound footlocker which was seized by surveilling officers immediately after it was placed in the trunk of automobile. It was taken to the station house and later opened without obtaining a warrant and the same yielded a con-

siderable quantity of marijuana. In holding this search in violation of the Warrant Clause, Your Honors went through the "treadmill" of reviewing the many previous cases involving warrantless seizures and searches. The opinion discussed particularly the exception to the Warrant Clause in automobile cases commencing with the prohibition case of Carroll vs. United States, 267 U.S. 132, 45 S. Ct. 280, 69 L. Ed. 543 (1925) which at that time most recently had been affirmed and followed in the case of Chambers vs. Maroney, 399 U.S. 42, 90 S. Ct. 1975, 26 L.Ed. (2d) 419 (1970). In sum, after thorough review, this Honorable Court distinguished completely the automobile cases per se from luggage which might be found therein and retrieved by the police after the car has been immobilized. The following excerpt from Chadwick demonstrates the conclusion arrived at by Your Honors:

"The factors which diminish the privacy aspects of an automobile do not apply to respondents' footlocker. Luggage contents are not open to public view, except as a condition to a border entry or common carrier travel; nor is luggage subject to regular inspections and official scrutiny on a continuing basis. Unlike an automobile, whose primary funcution is transportation, luggage is intended as a repository of personal effects. In sum, a person's expectations of privacy in personal luggage are substantially greater than in an automobile.

"(6,7) Nor does the footlocker's mobility justify dispensing with the added protections of the Warrant Clause. Once the Federal Agents had seized it at the railroad station and had safely transferred it to the Boston Federal Building under their exclusive control, there was not the slightest danger that the footlocker or its contents could have been removed before a valid search warrant could be obtained. The initial seizure and detention of the footlocker, the validity of which respondents do not contest, were sufficient to guard against any risk that evidence might be lost. With the footlocker safely immobilized, it was unreasonable to undertake the additional and greater intrusion of a search without a warrant."

Two terms after the decision in Chadwick, this Honorable Court took up on Writ of Certiorari the case of State of

Arkansas vs. Sanders (citation supra) on application of the prosecution. The Arkansas Supreme Court had directed that a Motion to Suppress timely filed in the trial court be sustained, and reversed the conviction of the defendant. This case, like the case a quo, involved the retrieval of a suitcase from the trunk of a taxicab, after the taxicab was stopped by the police based upon probable cause to search. It was stated by this Court that this case was taken up to resolve some apparent misunderstanding as to the application of the decision in Chadwick. In the opinion delivered by Mr. Justice Powell, it was pointed out that although the general principles applicable to claims of Fourth Amendment violations are well settled, litigation over requests for suppression of highly relevant evidence continues to occupy much of the attention of courts

at all levels of the State and Federal judiciary. (See 99 S. Ct. 2586, 2589). It was further pointed out that apparently small difference in the factual situation frequently is viewed as a controlling difference in determining Fourth Amendment rights. Then the decision went on to say:

> ". . . . The present case presents an example. Only two Terms ago, we held that a locked footlocker could not lawfully be searched without a warrant, even though it had been loaded in the trunk of an automobile parked at a curb. United States vs. Chadwick. In earlier cases, on the other hand, the Court sustained the constitutionality of warrantless searches of automobiles and their contents under what has become known as the 'automobile exception' to the warrant requirement. See, e. g. Chambers vs. Maroney (supra); Carroll vs. United States (supra). We thus are presented with the task of determining whether the warrantless search of respondent's suitcase falls on the Chadwick or the Chambers/Carroll side of the Fourth Amendment line. Although in a sense this is a line-drawing process, it must be guided by established principles."

In Sanders, this Honorable Court fol-

lowed and approved the rationale of Chadwick, holding that the warrantless search of the green suitcase taken from the trunk of the Sanders' car was in violation of Fourth Amendment rights. The following excerpt from Sanders clearly indicates that a definite and mandatory policy of complying with the Warrant Clause requirement must be followed in "luggage in automobile" cases:

> ". . . . .A lawful search of luggage generally may be performed only pursuant to a warrant. In Chadwick we declined an invitation to extend the Carroll exception to all searches of luggage, noting that neither of the two policies supporting warrantless searches of automobiles applies to luggage. Here, as in Chadwick, the officers had seized the luggage and had it exclusively within their control at the time of the search. Consequently, 'there was not the slightest danger that the luggage or its contents could have been removed before a valid search warrant could be obtained' 97 S. Ct. at 2484. And as we observed in that case, luggage is a common depository for one's personal effects, and therefore is inevitably associated with the expectations of privacy. Ibid" See 99 S. Ct. 2586, 2592.

The loud and clear directive of this Honorable Court as expressed in Chadwick, and as reaffirmed in Sanders, must be complied with by all State Courts. We submit that the decision of the Louisiana Supreme Court in this case, indistinguishable factually from these two latest decisions (as attested to by Justice Calogero) should be reversed, and that the Motion to Suppress timely filed herein should be sustained and the case remanded with proper instructions.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for Writ of Certiorari should be granted.

Respectfully submitted,

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Sep. 3, 1980

SUPREME COURT OF LOUISIANA

NO. 66,584

STATE OF LOUISIANA

VERSUS

VERNA BIBLE, ROBERT STEVEN MEZIERE and BILLY W. MOORE

Appeal From the Fifth Judicial District Court for the Parish of Richland
Honorable John C. Morris, Jr., Judge

LEMMON, Justice

Defendants, Verna Bible, Billy Moore and Robert Meziere, have appealed their conviction of possession of marijuana with intent to distribute, the sole assignment of error being the trial court's refusal to grant their motion to suppress the evidence seized after a warrantless search.

I.

State Trooper Warner received information from a confidential informant on

Dixon, C.J. concurs w/reasons
Calogero, J. concurs and assigns reasons
Dennis, J. dissents w/reasons
Watson, J. concurs in the result.

March 1, 1977 that Moore would be traveling from Texas in a blue and white Monte Carlo and would arrive at the J'Cal Trailer park in Rayville during the early morning hours of March 2, 1977 to deliver marijuana to a person named Lingefelt. Trooper Warner knew the informant, who had previously made a controlled purchase of narcotics under Warner's supervision. Although the informant had never previously given Warner information which led to a narcotics arrest, he had given Warner drug-related information which Warner independently verified.

Later that evening Trooper Warner and two other officers went to the J'Cal Motel to establish a surveillance. From the motel room they observed Lingefelt in a trailer behind the motel. At about 12:15 a.m. (in the early morning hours of March 2, 1977) they saw a blue and white Monte Carlo arrive at Lingefelt's trailer.

Trooper Payne recognized one of the passengers to be Billy Moore, having known him from Moore's prior involvement in illegal drug dealings. In fact Payne had previously purchased marijuana from Moore as an undercover agent during the closing months of 1976.

Defendant Meziere, the driver of the Monte Carlo, went to Lingefelt's trailer, and when Lingefelt came to the door, Moore opened the trunk of the Monte Carlo, took out a suitcase and a brown paper sack and took these articles into Lingefelt's trailer. After a period of less than fifteen minutes, Moore left the trailer with the suitcase and replaced it in the trunk of the Monte Carlo. Moore and Meziere then entered the Monte Carlo and drove away in an easterly direction on Highway 80. Shortly thereafter Lingefelt left the trailer, carrying what appeared to be the same brown paper sack which Moore had pre-

viously brought into the trailer, and drove off in a truck, also heading east on Highway 80.

In the meantime Trooper Payne and the other officer, at Trooper Warner's instruction, had followed the Monte Carlo and set up a roadblock about three-fourths of a mile east of the motel. When the officers stopped the car, they ordered the occupants (Moore, Meziere and Miss Bible) to get out and advised them of their rights, but told them they were not under arrest.[1] Trooper Warner had instructed the officers not to search the vehicle, but merely to hold it and the defendants pending his arrival.

When Lingefelt left the motel, Trooper Warner followed him and stopped him before he reached the roadblock. Trooper Warner

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1 The males were frisked by the officers. No evidence was produced by the frisk, and its validity is not an issue here.

observed a brown paper sack on the front seat next to Lingefelt, which had the same appearance as the sack he had seen Moore bring to the trailer. Warner took possession of the sack and opened it, finding a cellophane bag that contained one pound of marijuana.

Armed with this additional information, Trooper Warner placed Lingefelt under arrest and proceeded immediately to the location where the defendants were being detained. Upon arrival at the Monte Carlo (which the evidence established was only a few minutes after the initial stop), Warner told the defendants that he intended to search the car. He obtained the keys, opened the trunk, and found and opened the suitcase, finding the marijuana which was the target of the defendants' motion to suppress.

II.

In determining whether probable cause

may be found based on information from an unidentified informant, this court has followed the analysis outlined in Aguillar v. Texas, 378 U.S. 108 (1964), and State v. Paciera, 290 So. 2d 681 (La. 1974). The facts must establish the informant's credibility as well as the reliability of the information supplied. The decision in State v. Tassin, 343, So.2d 681 (La. 1977), noted that (1) the factors which support the credibility of an unidentified informant include prior accurate reports or any specific independent corroboration of the accuracy of the instant report and (2) the factors which support the reliability of the reported information include direct personal observation by the informant or, if the information came indirectly to the informant, detailed reasons with which to evaluate and credit the relibility of both the indirect source and of the indirectly obtained information.

As to the reliability of the information in this case, the tip did not represent the observation of an eyewitness, but it was sufficiently detailed to indicate that it was more than a "casual rumor circulating in the underworld". See Spinelli v. United States, 393 U.S. 410 (1969); State v. Wilson, 366 So. 2d 1328 (La.1978). The tip, as corroborated by surveillance, accurately described the autombile, the place to which the vehicle would deliver the marijuana, the person to whom the marijuana would be delivered, the person who would deliver the marijuana (a person known to the officers to be a drug dealer), and the approximate time of day when the transaction was to occur.

As to the credibility of the informant, Trooper Warner testified that the informant had previously supplied him with accurate information which, although not leading to an arrest, had been independently

verified. While the informant's participation in controlled buys does not alone pertinently establish credibility, the combination of all factors is sufficient to support an inference of credibility. See State v. Tassin, above. Significantly, this case is not one in which the sole basis for believing the information was his participation in a single controlled purchase.

Furthermore, the tip in this case was independently verified by surveillance prior to the search of the Monte Carlo. As the surveillance progressed, the officers watched the informant's tale unfold before their eyes just as it had been told. While it is conceded that the conduct observed was consistent with innocent behavior, the tip gave the conduct the color of criminal activity. The defendants' behavior, together with Moore's known previous involvement with illegal drugs,

added credibility to the informant's tale.

By the time Meziere drove the Monte Carlo away from the J'Cal Motel, the officers were certainly justified in stopping it, and even if they did not yet have probable cause to search, they certainly had enough information to justify stopping the car and temporarily detaining its occupants. At that point the officers unquestionably had an articulable basis for their suspicions, thereby justifying the initial stop. See State v. Jernigan, 377 So.2d 1221 (La.1979); State v. Jefferson, 284 So.2d 882 (La.1973).[2]

III

When the search complained of occurred,

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2 As the court held in the Jernigan case, above, even tips which are deficient under the standards of Aguilar v. Texas, above, and State v. Paciera, above, may justify an investigatory stop if the tip carries sufficient "indicia of reliability, such as specificity of the information corroborated by independent police work". 377 So. 2d at 1222.

Trooper Warner had developed almost conclusive corroboration of the tip, namely, the marijuana found in Lingefelt's truck. After the discovery of Lingefelt's marijuana, probable cause clearly existed to search the Monte Carlo when Trooper Warner arrived on the scene. The question is whether the marijuana seized from Lingefelt can be considered in determining probable cause to search the car.

La. Const. Art. I, Sec.5 (1974) accords to an accused the right to object to the admissibility of illegally seized evidence, even though the search does not invade the accused's own legitimate expectation of privacy. State v. Hebert, 351 So.2d 434 (La.1977). Compare Rakas v. Illinois, 435 U.S. 922.[3] Nevertheless, in State v.

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3 If the court were dealing solely with the Fourth Amendment standards, there would be no question concerning the appropriateness of use of the marijuana discovered in Lingefelt's truck in connection with the defendants' case either to sup-

Cullotta, 343 So.2d 977 (La.1977), this court recognized that the laudatory deterrent purpose served by the Louisiana exclusionary rule does not mandate that illegally seized evidence cannot be considered in support of probable cause. This observation is particularly pertinent in a case, such as this one, in which the illegally seized evidence merely corroborates information that was legally obtained. As in the Cullotta case, this case does not involve a situation in which the possibly illegal evidence was the sole basis for establishing probable cause. The evidence produced by the questionable seizure from Lingefelt's truck merely served to corroborate other information and to provide an additional basis for the determination that the other information came from a

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port guilt or to establish probable cause. See Rawlings v. Kentucky, ___ U.S. ___ (1980) (No. 79-5146, decided June 25, 1980); Wong Sun v. United States, 371 U.S. 471 (1963).

credible source. Therefore, although the validity of the seizure from the truck presents a close question, Lingefelt's marijuana may nevertheless be considered in support of Trooper Warner's probable cause to search the Monte Carlo.[4]

The use of the possibly illegal evidence for consideration in support of probable cause is particularly logical when viewed in light of the purpose of the exclusionary rule. The rule should not preclude the use of evidence seized from a vehicle in which defendants had no reasonable expectation of privacy, when the evidence was used merely to corroborate other information to support a finding of probable cause. The "deterrent policies and individual protection" expressed by Louisiana's Constitution are not violated

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4 The marijuana found in Lingefelt's truck was introduced at defendants' trial without objection. Thus, its admissibility to prove guilt is not before the court on this appeal.

under such circumstances. See State v. Cullotta, above, at 983.

We therefore conclude that when Trooper Warner arrived at the place where the Monte Carlo had been detained, he clearly had probable cause to believe that defendants were involved in illegal activity involving marijuana and that the Monte Carlo had been used to transport marijuana. However, further inquiry is necessary because Trooper Warner thereafter conducted his search of the truck of the automobile and of the suitcase without obtaining a warrant.[5]

In cases of searches of automobiles, the Supreme Court of the United States and this court have held that officers acting with probable cause may stop and

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5 In cases of warrantless searches the state bears the burden of proving the validity of the search and hence the admissibility of evidence seized pursuant to the search. State v. Franklin, 353 So.2d 1315 (La.1977).

search moving vehicles. Carroll v. United States, 267 U.S. 132 (1925); Chambers v. Maroney, 399 U.S. 42; State v. Tant, 278 So.2d 458 (La.1974). This position has been adopted, despite the usual preference for a judicial determination of probable cause prior to a search, in part because of the diminished expectation of privacy in an automobile. When probable cause exists, the courts have not required officers merely to stop vehicles and detain them pending the issuance of a search warrant. Texas v. White, 423 U.S. 67 (1975).

We therefore conclude that Trooper Warner's action in having defendants' vehicle stopped and in opening the trunk of the vehicle was lawful despite the absence of prior judicial approval.

The warrantless search of the suitcase presents a more difficult problem. In Arkansas v. Sanders, 99 S. Ct. 2586 (1979), the court declared illegal the warrantless

search of a suitcase taken from the trunk of a taxicab that had been legally stopped, despite the fact that the officers had probable cause to believe the suitcase contained marijuana. The court refused to extend the rationale of the Carroll and Chambers cases to luggage being carried in a vehicle.

In the Sanders case the officers had probable cause to believe that defendant would arrive at the Little Rock Airport with a green suitcase containing marijuana. They saw the defendant disembark from an aircraft carrying a green suitcase and leave in a taxi. They then stopped the taxi and seized and searched the suitcase. The court found that "a suitcase taken from an automobile stopped on the highway is not necessarily attended by any lesser expectation of privacy than is associated with luggage taken from other locations." Once the suitcase was immobilized and

taken into police custody, the court found no justification or greater need for a warrantless search of luggage taken from an automobile than of luggage taken from any other location. See Chadwick v. United States, 433 U.S. 1 (1977).

In a concurring opinion in the Sanders case, Chief Justice Burger opined that the decision did not bar the warrantless search of luggage located in a vehicle under all circumstances. The opinion noted, for example, the case in which officers have probable cause to believe that the contraband is located somewhere within a stopped vehicle, but do not know whether it is located in a piece of luggage, or in the glove compartment, or elsewhere in the car.

In the present case, although the officers conducting the surveillance (based on a tip) had seen the suitcase taken into Lingefelt's trailer and later replaced in the trunk, the tip did not directly men-

tion or describe a suitcase, as did the tip in the Sanders case, but rather described a blue and white Monte Carlo. The only place in the vehicle that the officers in the Sanders case had probable cause to believe that marijuana might be found was in the defendant's green suitcase, and, indeed, the officers arguably did not have probable cause to seize the taxicab and take it to the station. Here, the officers had probable cause to search the entire vehicle, and although the suitcase was one likely place to look, the probable cause was not focused on a particular location within the vehicle, including the suitcase, and the taking of the suitcase to the station to obtain a warrant before the search (as suggested in the Sanders decision) would not have removed the exigency of mobility associated with the automobile.[6]

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6 The Sanders decision discussed and re-

Thus, we distinguish the Sanders case, in which the officers had probable cause only to search the suitcase and in which exigent circumstances no longer existed after the suitcase was taken into custody, from this case, in which exigent circumstances continued to exist, whether or not the officers found marijuana in the suitcase. Furthermore, the officers in this case clearly had probable cause to search the entirety (including the luggage, the trunk, the glove compartment, and other areas) of the vehicle they had legally stopped, while the officers in the Sanders case arguably did not have probable cause

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cognized that the societal cost of an inflexible requirement to obtain a warrant to search a legally stopped automobile outweighed the value of presenting probable cause to a neutral magistrate, stating:

> ". . . In Chambers, if the Court had required seizure and holding of the vehicle, it would have imposed a constitutional requirement upon police departments of all sizes around the country to have available the people

to search a public taxicab apparently unrelated to defendant or to the tip from the confidential informer.

There is still another reason to find the Sanders decision does not require suppression of the marijuana seized from the Monte Carlo. The search here took place in March of 1977, over two years before Sanders was decided.[7] Cases extending the exclusionary rule should not be given retroactive effect to bar admissibility of evidence which officers seized in good faith relying on existing standards. See

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and equipment necessary to transport impounded automobiles to some central location until warrants could be secured. Moreover, once seized automobiles were taken from the highway the police would be responsible for providing some appropriate location where they could be kept, with due regard to the safety of vehicles and their contents, until a magistrate rules on the application for a warrant. Such a constitutional requirement therefore would have imposed severe, even impossible, burdens on many police departments."

7 Arkansas v. Sanders, above, was decided on June 20, 1979.

United States v. Peltier, 422 U.S. 531 (1974). Several courts have refused to order exclusion of evidence when, as here, the search of an article or luggage occurred prior to the date of the Sanders and Chadwick[8] decisions. See Kimmer v. State, 598 S.W. 2d 403 (Tex.Cr.App.1979); United States v. Calandrella, 605 F.2d 236 (6th Cir.1979); United States v. Stewart, 595 F.2d 500 (9th Cir.1979); and United States v. Montgomery, 538 F.2d 311 (5th Cir.1977).

For the foregoing reasons, the convictions and sentences are affirmed.

AFFIRMED.

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8 Chadwick v. United States, above, was decided on June 21, 1977, almost four months after the date of this search. The Chadwick case involved a warrantless search of a footlocker taken into police custody. Although officers had probable cause to believe marijuana was contained in the footlocker, the court found no justification for their failure to obtain prior judicial approval before opening the locker to seize its contents. Whether the Chadwick decision may have forecast the decision in Sanders is of no consequence here because the search here occurred before both decisions.

SUPREME COURT OF LOUISIANA

STATE OF LOUISIANA

VERSUS NO. 66,584

VERNA BIBLE, ROBERT STEVEN MEZIERE and BILLY W. MOORE

CALOGERO, Justice, concurring

I concur because I agree that Sanders and Chadwick, supra, are not to be given retroactive application. I do, however, find them indistinguishable from the instant case.

SUPREME COURT OF LOUISIANA

STATE OF LOUISIANA

Versus No. 66584

VERNA BIBLE, ROBERT STEVEN MEIZERE and BILLY W. MOORE

DIXON, Chief Justice (concurring)

I respectfully concur in the result, because there was probable cause to search both the trunk and the automobile after the police saw the transfer of the material taken from the car. There was therefore no illegally seized evidence, and no possibly illegal detention of the automobile.

Oct. 31, 1980

SUPREME COURT OF LOUISIANA

NO. 66,584

STATE OF LOUISIANA

VERSUS

VERNA BIBLE, ROBERT STEVEN MEZIERE and BILLY W. MOORE

On Application for Rehearing

PER CURIAM.

The application for rehearing correctly points out that we erroneously listed the date of the seizure as March 2, 1977, when the seizure in fact occurred on March 2, 1979. The seizure was therefore before the Sanders decision, but after of the Chadwick decision.

Nevertheless, the non-retroactivity of the Chadwick and Chambers decisions

Calogero, J., dessents with reasons (attached)
Dennis, J., would grant a rehearing.

was only an alternate ground for affirming the denial of the motion to suppress, and the validity of the other grounds still stands. Moreover, the fact that this search occurred after the Chadwick decision is not of great significance, since the rationale of the Chambers decision was unaffected by the Chadwick decision. See United States v. Oches, 595 F.2d 1247 (2d Cir., 1979). Compare United States v. Dien, 609 F.2d 1038 (2d Cir. 1979), on rehearing, 615 F.2d 10 (2d Cir. 1980). Therefore, at the time of this search the Chambers rationale had not been limited or modified, and the search pursuant to that rationale was valid.

The application for rehearing is denied.

APPLICATION DENIED.

SUPREME COURT OF LOUISIANA

STATE OF LOUISIANA

VERSUS NO. 66,584

VERNA BIBLE, ROBERT STEVEN MEZIERE and BILLY W. MOORE

CALOGERO, Justice, dissenting

Relying upon the majority's assertion that the search occurred on March 2, 1977, prior to United States v. Chadwick, 433 U.S. 1, 97 S.ct. 2476, 53 L.Ed.2d 538 (1977), I concurred in the majority expression that Chadwick not be given retroactive application. In light of the correction in the date of the search and the effect of the Chadwick case, this case being indistinguishable from Chadwick, I am of the opinion that defendants' convictions should be reversed. In Chadwick, the United States Supreme Court stressed that luggage is intended as a repository of personal effects and that the contents

are not open to public view. Consequently, a person's expectation of privacy regarding personal luggage is substantially greater than in an automobile. When no exigency is shown to exist, supporting the need for an immediate search, a warrant is required to validate the search of luggage. 433 U.S. at 13-15.

For this reason, I would grand a rehearing.

SUPREME COURT OF LOUISIANA

NO. 66,584

STATE OF LOUISIANA

VERSUS

VERNA BIBLE, ROBERT STEVEN MEZIERE and BILLY W. MOORE

FILED: ____,1980

APPLICATION AND ORDER FOR STAY OF EXECUTION

UPON MOTION of VERNA BIBLE, ROBERT STEVEN MEZIERE and BILLY W. MOORE, defendants-appellants in the above styled and numbered cause, through their undersigned counsel, and on suggesting to this Honorable Court that its decree of September 3, 1980 affirming the verdict and sentence of the Fifth District Court in and for the Parish of Richland is now final, this Court having refused an Application for Rehearing on October 31, 1980, and on further suggesting that the defendants are desirous of applying to the Supreme Court of the United States for a Writ of Certio-

rari to review the decision of this Honorable Court upon the Constitutional issue raised in said cause and as shown by the record of the same:

IT IS ORDERED That petitioners, VERNA BIBLE, ROBERT STEVEN MEZIERE and BILLY W. MOORE, be granted a Stay of Execution of the Decree of this Honorable Court for a period of 60 days from this date.

DONE AND SIGNED In Chambers on this the 6th day of November, 1980.

s/ John A. Dixon
JUSTICE

New Orleans, Louisiana

Supreme Court of Louisiana
Filed Nov - 6 1980

FILED
MAR 30 1981
ALEXANDER L. STEVAS
CLERK

NO. 80-1080

IN THE

SUPREME COURT OF THE UNITED STATES

1980 TERM

VERNA BIBLE, ROBERT STEVEN MEZIERE AND BILLY W. MOORE,
Petitioners,

Versus

STATE OF LOUISIANA,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

RESPONSE OPPOSING PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

The State of Louisiana feels compelled to amplify and correct the Statement of the Case as set forth in defendants' brief.

Prior to the search of the vehicle in question, State Trooper Danny Warner had received information from a reliable confidential informant that a blue and white Monte Carlo would be arriving at the J'Cal Motel and Trailer Park in Rayville during the early morning hours of the next day. The informant further told Trooper Warner that defendant Billy Moore would be in the car and would be delivering marijuana to a person named Lingefelt. Surveillance was established at the motel, and shortly after midnight (the early morning hours of March 2, 1979), the vehicle arrived and backed up to the trailer occupied by Lingefelt. Moore exited the car, opened the trunk of the vehicle and took a suitcase and a brown paper sack

into Lingefelt's trailer. It should also be added that defendant Moore was known to surveilling officers as a drug peddler, as one of the officers had purchased marijuana from Moore previously.

Approximately fifteen minutes later, defendant Moore and defendant Meziere exited the trailer, replaced the suitcase in the trunk of the vehicle and left the motel premises. Shortly thereafter, Lingefelt left the trailer carrying what appeared to be the same brown paper sack which defendant Moore had previously brought to the trailer. The officers then proceeded to a road block less than one mile east of the motel where other officers had stopped the defendants' vehicle and also the Lingefelt vehicle.

Trooper Warner, who was in charge of the investigation, stopped the Lingefelt subject, seized the brown paper sack on the front seat of the vehicle and determined the contents thereof to be marijuana. Trooper Warner instructed the other officers

to stop defendants' vehicle, but not to search the vehicle, pending his arrival. The officers who stopped defendants did not place them under arrest, but did order defendants out of the vehicle. The males (defendants Moore and Meziere) were frisked by officers, but the officers did not search the vehicle prior to Trooper Warner's arrival. Warner arrived, minutes after stopping the Lingefelt vehicle, and told defendants that he intended to search their car. He obtained the keys from one of the defendants and opened the trunk of the car. The suitcase was unlocked, and Trooper Warner opened it on the spot, finding the only contents to be approximately four pounds of marijuana.

The entirety of the surveillance of defendants, the stop, and the search of defendants' vehicle consumed only a matter of a few minutes. It should be finally noted that the defendants were not actually arrested until the search was completed.

SUMMARY OF ARGUMENT

The search of defendants' suitcase was permissible because the police officers had probable cause to search the defendants' vehicle which contained the suitcase. The probable cause was focused on the vehicle itself, since the officers had (1) received an informant's tip that marijuana was being carried in the vehicle and (2) the tip had been confirmed when the officers saw the vehicle used in an apparent drug "drop." Hence under Carroll v. United States, 267 U.S. 132, 45 S.Ct. 280 (1925) and Chambers vs. Maroney, 399 U.S. 42, 90 S.Ct. 1975 (1970), the vehicle and contents could be searched.

The search in this case is not rendered invalid under United States vs. Chadwick, 433 U.S. 1, 97 S.Ct. 2476 (1977) or under Arkansas vs. Sanders, ____ U.S. _____, 99 S.Ct. 2586 (1979). Each of these cases hold that a search warrant is required if a piece of luggage is the focal point of probable cause to search, and the luggage has been

seized and is in the possession of law enforcement officers. In these cases, the automobile bore no relation to the probable cause, and, in fact, there existed no probable cause in these cases to search the automobiles involved.

In the instant case, the focal point of the search was the automobile itself, not the luggage. Hence, the police officers could properly look into the unlocked suitcase during the course of searching the vehicle for contraband.

ARGUMENT

MAY IT PLEASE THE COURT:

The State of Louisiana opposes the petition for Writ of Certiorari, for the reason that the state court judgment in question does not conflict with the present jurisprudence concerning automobile searches.

This court has held in Carroll vs. United States, 267 U.S. 132, 45 S.Ct. 280 (1925) and Chambers vs. Maroney, 399 U.S. 42, 90 S.Ct. 1975 (1970) that due to exigent circumstances, officers acting with probable cause may stop and search moving vehicles without a search warrant. In the instant case, there was probable cause to stop the vehicle operated by defendants. Defendants were dispensing drugs from the vehicle, and, in fact, had been seen by officers making a "drop" only minutes before the vehicle was stopped. Since there was no time to obtain a warrant before the vehicle got out of sight and the contraband disposed of, the vehicle was stopped and searched quite in line with

the Carroll and Chambers doctrines.

In this case, however, defendants embrace the doctrines espoused in United States vs. Chadwick, 433 U.S. 1, 97 S.Ct. 2476 (1977) and Arkansas vs. Sanders, ____ U.S. _____, 99 S.Ct. 2586 (1979), which defendants cite as authority for prohibiting the search of the suitcase which was removed by Trooper Warner from the trunk of defendants' vehicle. Chadwick and Sanders were cases involving searches of a footlocker in the former case and a green suitcase in the latter instance. In both instances, the police were on the lookout for the piece of luggage itself, so the focal point of the probable cause was directed at the particular piece of luggage involved. In Chadwick, the police had arrested defendants, and had actually taken the footlocker from the trunk of an automobile, then to the Federal Building in Boston, and did not open the footlocker until one and one-half hours following the seizure. The court found that the search was conducted

"long after respondents were securely in custody" and that the search "therefore cannot be viewed as incidental to the arrest or as justified by any other exigency." Chadwick supra, at pages 2485, 2486. In Sanders, the green suitcase was retrieved from a taxi cab by the police and opened on the spot. The court found, at page 2593 of the opinion, that the police had "seized a suitcase" which was then in police control and thus immobile. The Court felt that under these non-exigent circumstances, the search did not fall under the automobile exception created under the Carroll and Chambers tests. In the concurring decision in Sanders, Mr. Chief Justice Burger felt that the case did not present a question of whether a warrant is required before opening luggage when the police have probable cause to believe that contraband is located somewhere in the vehicle but they do not know exactly where. Sanders, supra, at page 2595.

In the case under consideration, the

officers had, from the informant's tips, probable cause to believe that marijuana was being carried in a blue and white Monte Carlo. Nothing was said in the tip about a suitcase. The officers, being familiar with the Carroll and Chambers doctrines, certainly felt that they could legitimately search the vehicle, which was a moving instrument of crime, as had very obviously been observed during the drug "drop" only minutes before stopping the vehicle. It is submitted that Chadwick, supra, did not change the rationale of Carroll, supra, and Chambers, supra, as Chadwick did not deal with the search of a vehicle as to which officers had probable cause to believe contained contraband, but dealt with, instead, the search of a foot-locker in the repose of the Federal Building in Boston, a lengthy time after the seizure took place. It is further submitted that Sanders, supra, did not undermine the Carroll and Chambers cases, as the focal point of the investigation and search was the suitcase,

and not the automobile. As was pointed out by Louisiana Supreme Court Justice Lemmon, writing for the majority in our decision:

> "The only place in the vehicle that the officers in the Sanders case had probable cause to believe that marijuana might be found was in the defendant's green suitcase, and, indeed, the officers arguably did not have probable cause to seize the taxi cab and take it to the station. Here, the officers had probable cause to search the entire vehicle, and although the suitcase was one likely place to look, the probable cause was not focused on a particular location within the vehicle, including the suitcase, and the taking of the suitcase to the station to obtain a warrant before the search (as suggested in the Sanders decision) would not have removed the exigency of mobility associated with the automobile."

> "Thus, we distinguish the Sanders case, in which the officers had probable cause only to search the suitcase and in which exigent circumstances no longer existed after the suitcase was taken into custody, from this case, in which exigent circumstances continued to exist whether or not the officers found marijuana in the suitcase. Furthermore, the officers in this case clearly had probable cause to search the entirety (including the luggage, the trunk, the glove compartment,

> and other areas) of the vehicle they had legally stopped, while the officers in the Sanders case arguably did not have probable cause to search a public taxi cab apparently unrelated to the defendant or to the tip from the confidential informer."

The State of Louisiana submits that the law enforcement authorities in this case, having probable cause to stop and search the defendants' vehicle, could lawfully search the unlocked suitcase. This Court certainly could not expect the officers to go obtain a search warrant for the suitcase, when the probable cause was focused not on the suitcase in particular, but on the vehicle, which was described in the informant's tip. It is felt that this court in Sanders, supra, did not intend to prohibit opening an unlocked suitcase during searches of vehicles and that the decision itself was limited to the factual situation involving probable cause focused on a particular suitcase, rather than a vehicle. It is submitted that the Carroll and Chambers doctrines as regards the search of a vehicle, and the contents

thereof, when police have probable cause to believe that contraband exists therein, remains intact, and these cases uphold the search in this instance.

CONCLUSION

For the reason that the decision of the Louisiana Supreme Court in this case is supported by the Carroll vs. United States, supra, and Chambers vs. Maroney, supra, cases, and does not, in fact, conflict with the cases cited by defendants, namely United States vs. Chadwick, supra, or Arkansas vs. Sanders, supra, the State of Louisiana respectfully submits that this Honorable Court should refuse to grant a Writ of Certiorari in this case and that the petition for Writ of Certiorari filed herein be dismissed.

Respectfully submitted,

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